

**87-1999**

No.

IN THE

**Supreme Court of the United States**

JUNE TERM, 1988

ROBERT A. and  
ELAINE M. PFLUGER

Petitioners  
Plaintiff-Appellant

v.

COMMISSIONER OF  
INTERNAL REVENUE

Respondent  
Defendant-Appellee

**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**Jurisdiction Statement**

Robert A. Pfluger  
1317 Boilvin  
Rockford, Illinois  
61103  
815 964 2717  
Pro Se

Gary R. Allen  
Chief, Appellate Section  
Tax Division  
Dept. of Justice  
P.O. Box 502  
Washington, D.C. 20044

Solicitor General  
Dept. of Justice  
Washington, D.C. 20530



## QUESTIONS PRESENTED FOR REVIEW

1. Are Petitioners Fifth Amendment Rights being ignored?
2. Did the Commissioner of Internal Revenue err in determining whether or not the Robert A Pfluger Family Trust was an anticipatory assignment of income type trust when the only monies placed in the trust were monies to cover business expenses and income taxes were paid on the remainder of income by the taxpayer.
3. Is disallowing all deductions of the Trust when the Grantor Taxpayer refuses to produce all of his books and records on the grounds of:
  1. Fifth Amendment Rights as per *Boyd v. U.S.* 116 U.S. 616,
  2. It is the Trustees who should be audited
  3. The Commissioner is going on a "fishing expedition" because he wants all books and records,without granting some sort of deduction according to law, repugnant to the Constitution?
4. Did the Commissioner err and make an arbitrary determination and assess a negligence penalty?
5. Is there insufficient evidence to show what type of Trust is the Robert A Pfluger Family Trust?
6. Is the United States Government Levelling?
7. Did the commissioner err in not calling in the Trustees to examine their books and records?

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### **(e) JURISDICTION**

The judgement sought to be reviewed is the order of the United State Court of Appeals for the Seventh Circuit. Chicago, Illinois of March 7, 1988, invoked under 284SC 1254 (1).

### **(f) CONSTITUTIONAL PROVISIONS**

Art. I Sec. 2 Cl 3 Representatives and direct Taxes shall be apportioned among the several States which may be

Art I Sec 8 Cl 1 The Congress shall have the Power to lay and collect Taxes, Duties, Impost and Exises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Impost and Exises shall be uniform throughout the United States

#### **16th Amendment**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration

#### **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law: nor shall private property be taken for public use, without just compensation.

### **(g) CONSISE STATEMENT OF CASE**

In 1980, due to the largeness of both Illinois State and Federal Inheritance Tax on farm property, Pfluger sought to form a Trust to avoid this tax.

Because his lawyer did not tell him about trusts when he made out his will, Pfluger sought a non lawyer to make a trust for him.

Unfortunately, the non lawyer had been forming Grantor type trust but were modifying their new trust to meet the then present judicial standards for non Grantor type trust.

The trust was formed with some of the old and some of the newly revised methods on advise of two lawyers and one Certified Public Accountant and called The Robert A Pfluger Family Trust.

The Pflugers were audited because of the Trust name and Pfluger refused to turn over his books and records to the I.R.S. on the grounds that the agents were going on a fishing expedition, the Trustees should have been called in to the audit, a claim a fourth and fifth amendment rights according to Boyd v. U.S.

The I.R.S. ignored all arguments regarding the trust and called it an anticipatory assignment of income. They disallowed all business deductions and claimed a 50% on the amount disallowed. A-6

Pflugers could not pay the alledged tax and went to the Tax Court.

Sanctions were applied against Pfluger, prohibiting him from using any of his books and records to prove his case.

The Tax Court decision was rendered on Dec. 2, 1986.

The Case was appealed to the Appellate Court and a decision rendered March 7, 1988.

A Notice Of Appeal was filed on May 25, 1988.

### **(i) BASIS FOR FEDERAL JURISDICTION**

In the testimony of Pfluger, he stated he claimed the 5th Amendment rights at the audit.

Attorney Jan Lamontine in the Tax Court Testimony stated that Pfluger claimed fifth amendment rights.

## (j) ARGUMENT

The Commissioner erred in judging the Trust as anticipatory assignment of income and Grantor type.

The decision on this matter was made prior to the audit of Pfluger, because Pfluger and his wife were called in for an audit and not the Trustees. See Appendix Pg. 1 and in addition the agents who did the auditing wanted all books and records of taxpayer to see what they could find. They did not even have a copy of Pflugers 1040 Form at the audit. See Administrative Record Tape Recording.

Pfluger pled fifth amendment rights at the initial audit and this was transferred to "Taxpayer will not provide any information" rather than, He pled the fifth.

Pfluger pled the fifth consistently throughout this procedure and it is being interpreted as "refusal to cooperate."

At the Tax Court trial, the lawyer for the government Jan Lamartine testified to the fifth amendment pleading of Pfluger.

The judge commented upon it and Pfluger testified to it and the judge ignored it.

In the appellate Court reference was made to it indirectly on pg. 14 but the decision of the Court ignored it.

A full disclosure of all trust records was not made because they were records of the Trust and not of Taxpayer and Grantor. If the I.R.S. had not been so adamant in disallowing the Trust and had respected the Constitutional rights of taxpayer, they probably would have summoned the Trustees to the Trust rather than just Pfluger and his wife to the audit and the records of the trust probably would have been given to them.

Absent the full records of the Trust it is impossible to determine the workings of the and the number of trustees etc.

The I.R.S. fabricated most of their allegations about the trust from histories of previous Grantor type trust. There is no testimony to one half of what they alledge.

The soul reason for the audit was because of the name of the Trust. Pfluger did not place all of his income in the trust only the expense of his farm and dental practice. See Appendix pg. 2 and 3.

**The commissioner** disallowed all ordinary business expenses because he was arbitrary.

Pfluger put his assests into the trust to avoid the inheritance tax, not to deduct his ordinary living expenses. The 1040 form so indicates. The I.R.S. claimed that Schedule C was used to avoid taxes by diverting income to the trust. Schedule C had been used for years in his business as a dentist and farmer.

## LEVELLING

Pfluger maintains that the U.S. Constitution in Art. I Sec 8 Cl 1 and Art. I Sec 2 C1 3 forbids levelling as per the intent of our founding fathers and the Court has never ruled whether or not it does or doesn't and whether or not the government is or is not levelling society through its direct payment benefit laws using money from income taxes collected on incomes that cannot be separated from the source.

There were two intents behind the Constitutional limitations on taxation. 1. To provide monies for the government, 2. To prevent levelling.

The 16th Amendment did not remove the intent to prevent levelling.

The method to prevent levelling has been the thing brought to the Courts over the years. It seems as though the intent has been forgotten.

The only time the intent was discussed in any meaningful way was in the dissenting opinion of Douglas v. California. A-4

There can be found no more powerful statement of our founding Fathers in regards to levelling than that of Samuel Adams. James Wilson statement should be considered also

"The utopian schemes of levelling and a community of goods are as visionary and impracticable as those which vest all property in the Crown, are arbitrary, despotic, and in our government unconstitutional." A-5

It is what the income tax has become, through various direct payment benefit laws that is unconstitutional, not what it once was.

New decisions have to be made.

## CONCLUSION

The Court should approve the Certiorari.

**(k) APPENDIX**

## JUDGEMENT – ORAL ARGUMENT

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

March 7, 1988

## Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. RICHARD A. POSNER, Circuit Judge

ROBERT A. PFLUGER, and  
ELAINE M. PFLUGER,  
Petitioners - Appellants,  
No. 87-1503 vs.

**COMMISSIONER OF  
INTERNAL REVENUE,  
Respondent - Appellee.**

## Appeal from the United States Tax Court.

The cause was heard on the record from the United States Tax Court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the United States Tax Court is AFFIRMED, with costs to the respondents, in accordance with the opinion of this Court filed this date.

UNITED STATES TAX COURT

ROBERT A. PFLUGER and )  
ELAINE M. PFLUGER, )  
Petitioner's )  
v. ) Docket No. 30209-82  
COMMISSIONER OF )  
INTERNAL REVENUE, )  
Respondent. )

**DECISION**

Pursuant to the opinion of the Court filed February 24, 1986, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

**ORDERED and DECIDED:** That there is a deficiency in income tax due from petitioners for the taxable year 1980 in the amount of \$23,852.00; and

That there is an addition to tax due from petitioners for the taxable year 1980, under the provisions of I.R.C. § 6653 (a) in the amount of \$1,193.00.

Charles R. Simpson  
Judge

Entered: December 2, 1986

**Internal Revenue Service**  
211 S. Court  
Rockford, IL 61101  
815-987-4261  
November 30, 1981

Robert & Elaine Pfluger  
5445 Kilburn Ave.  
Rockford, IL 61103

**Kind of Tax: Income**  
**Taxable Period(s): December 31, 1980**  
**Tax Form Number: 1040**

**Mr. & Mrs. Pfluger:**

Your Federal Income Tax Return(s) cited above has (have) been assigned to me for examination. Please assemble and have available for my use in the examination the following items (as checked and applicable):

- All books and records of your income and deductions and any workpapers used in preparing the return(s).
- Bank statements, deposit tickets and cancelled checks for all business and personal accounts for the year(s) 1980 and January of the following year, savings account passbooks, loan liability ledger(s), and investment records (both business and personal).
- All invoices on expenses and statements, sales slips, etc., on income items.
- Copies of the following returns:  
December 31, 1980 — Form 1040
- Corporate minutes and stock record book.
- Working trial balance (worksheet), general journal (including adjusting entries), general ledger, cash receipts journal, cash disbursements journal, sales and accounts payable journals, depreciation schedules, inventory records (above items required only if used in your record keeping system).

## **Profit or Loss From Business or Profession**

### **Schedule C**

**(Form 1040)**

**Robert A Pfluger**

**A Main business activity      Dentistry**

1 a Gross receipts or sales      1 a 159,091.00

#### **32. Other expenses**

**Professional Management Service Fee 95,000.00**

**Profit or (Loss) From Business or Profession**

**Schedule C** 1980

Name . . . Robert A Pfluger Family Trust  
3703 N. Main  
Rockford, IL I.D. 36 6707 393

Part 1

1 a Gross receipts 95,000.00

LEVEL 2 - 3 OF 5 CASES

DOUGLAS ET AL. V. CALIFORNIA

No. 34.

372 U.S. 353 Page 811

Argued April 17, 1962. - Restored to the calendar for  
reargument June 25, 1962. - Reargued January 16, 1963.

March 18, 1963, Decided

DISSENT:

... while not eliminating them entirely.

Every financial exaction which the State imposes on a uniform basis is more easily satisfied by the well-to-do than by the indigent. Yet I take it that no one would dispute the constitutional power of the State to levy a (362) uniform sales tax, to charge tuition at a state university, to fix rates for the purchase of water from a municipal corporation, to impose a standard fine for criminal violations, or to establish minimum bail for various . . .

... protection to the less fortunate for one essential reason: the Equal Protection Clause does not impose on the States "an affirmative duty to lift the handicaps flowing from differences in economic circumstances." n2 To so construe it would be to read into the Constitution a philosophy of levelling that would be foreign to many of our basic concepts of the proper relations between government and society. The State may have a moral obligation to eliminate the evils of poverty, but it is not required by the Equal Protection Clause to give to some . . .

**Life of Samuel Adams, Wells, pg. 154. 2nd para.**

"The utopian schemes of levelling and a community of goods are as visionary and impracticable as those which vest all property in the Crown, are arbitrary, despotic, and in our government, unconstitutional."

**Works of James Wilson, McCloskey.  
Vol. 1 Harvard Press, pg. 241:**

"But however great the variety and inequality of men may be, with regard to virtue, talents, taste, and acquirements, there is still one aspect, in which all men in society, previous to civil government, are equal. With regard to all, there is an equality in rights and in obligation; there is that "jus aequum," that equal law, in which the Romans place true freedom. The natural rights and duties of man belong equally to all. Each forms a part of that great system, whose greatest interest and happiness are intended by all the laws of God and nature. These laws prohibit the wisest and the most powerful from inflicting misery on the meanest and most ignorant; and from depriving them of their rights or just acquisitions. By these laws, rights, natural or acquired, are confirmed, in the same manner to all; to the weak and artless, their small acquisitions as well as to the strong and artful, their large ones. If much labour employed entitles the active to great possessions, the indolent have a right, equally sacred to the little possessions, which they occupy and improve.

James Wilson was a signer of the Declaration of Independence and the United States Constitution and an Associate Justice of the Supreme Court of the U.S. from 1789 to 1798.

**Internal Revenue Service  
District Director**

**Department of  
the Treasury**

Date: September 29, 1982

**Social Security or  
Employer Identification  
Number: 334-26-4287**

**Person to Contact:  
D. Tomanica**

**Contact Telephone Number:  
886-4491**

Robert A. Pfluger  
Elaine M. Pfluger  
5445 Kilburn  
Rockford, Illinois 61103

**CERTIFIED MAIL**

Sir and Madam:

"In accordance with the provisions of existing Internal Revenue laws, notice is given that the determination of your income tax liability discloses a deficiency for the taxable year ended December 31, 1980 in the amount of \$42,762 and negligence addition to tax under code section 6653(a) of \$2,138. The attached statement shows the computation of the deficiency and addition to tax."

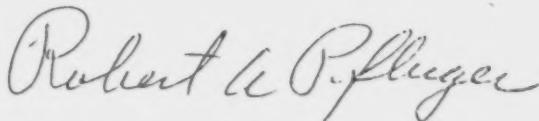
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

ROBERT A. PFLUGER and )  
ELAINE M. PFLUGER )  
Petitioners - Appellants. ) ) Appeal No. 87-1503  
v. ) )  
COMMISSIONER OF ) )  
INTERNAL REVENUE ) )  
Respondent - Appellee.

**NOTICE OF APPEAL**

May the Court and Clerk please take note that the Petitioners will appeal this case to the Supreme Court of the United States, Judgement of March 7, 1988 of Appellate Court affirming decision of Tax Court, as per 28 U.S.C. 1254 (1)

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Gary R. Allen  
Chief, Appellate Section  
Tax Division  
Dept. of Justice  
P.O. Box 502  
Washington, D.C. 20044

Solicitor General  
Department of Justice  
Washington, D.C. 20530

## AFFIDAVIT

I, Sherry Farmer, do hereby affirm that I have deposited in the United States Mail on May 26 with sufficient postage prepaid in the mailbox in front of the Loves Park, IL Post Office, three copies each of the Notice Of Appeal for case NO. 87-1503 to each of the following at their cited addresses.

Gary R. Allen  
Chief, Appellate Section  
Tax Division  
Dept. of Justice  
P.O. Box 502  
Washington, D.C. 20044

Solicitor General  
Dept. of Justice  
Washington, D.C. 20530

United States Court of Appeals  
For the Seventh Circuit  
219 South Dearborn  
Chicago, Illinois 60604

Sherry Farmer  
Sherry Farmer  
808 Iroquois  
Rockford, IL 61102

Subscribed and sworn to before me on this 26th day of May, 1988.

Notary

Hazel L. Lindblade

Hazel L. Lindblade  
6402 N. 2nd  
Loves Park, IL

My commission expires January 14th, 1992.